

Indus Valley Contract (4/6/06)

Online Marketing Partnership License Agreement

SeamlessWeb Professional Solutions, Inc. ("SW") has developed (i) a network of customers ("Customers"), (ii) certain proprietary methods of encouraging food and beverage ("Food") sales, (iii) customer attraction/retention programs for restaurants and (iv) operating cost reduction programs related to procurement of Food and other supplies by restaurants ((i), (ii), (iii) and (iv) collectively, the "Services"). Restaurant (as named below) and its Affiliates (as defined in Annex I) ("Restaurant") desire SW to provide the specific Services listed below to Restaurant. In consideration of the premises and covenants herein, both parties agree as follows:

1. Online Availability and License.

- a. SW agrees to enable certain Customers to purchase Food from Restaurant via SW's internet technology (the "System") for delivery and/or for takeout.
- b. SW agrees to use best efforts to maintain the System, update the software thereon and receive and transmit Food orders to Restaurant. Restaurant agrees to use best efforts to prepare (and deliver, as applicable) Food orders placed via the System in accordance with generally accepted restaurant industry and SW standards.
- c. In order to ensure the most efficient processing of Customers' Food orders and most effectively market Restaurant to Customers, Restaurant agrees to abide by SW's Standard Operating Procedures, which includes certain operations-related fees (e.g. closing without notice, menu updates, etc.), and requirements (e.g., the utilization of a Brother 2820 fax (updated from time-to-time) in an approved location).
- d. Restaurant agrees to provide SW with the lowest available published pricing for said Restaurant's standard Food delivery/takeout menu(s) or price list(s).
- e. SW agrees that it shall take commercially reasonable steps to enable Restaurant's menu to appear on search engines including Google.com, Yahoo.com, Ask.com and AOL.com.
- f. Notwithstanding anything in this Agreement to the contrary, in consideration of the services provided by SW, including but not limited to the Services and the use of the System, Restaurant hereby irrevocably grants SW a perpetual, exclusive, royalty-free world-wide license to use Restaurant's trademarks, logos, names and menus for purposes of display to retail customers and Customers via the Internet, satellite transmission, cable television and all other electronic means (and pursuant to Section 4, hereof). SW agrees that use of Restaurant's marks will be consistent with the quality standards that Restaurant had previously established. Restaurant agrees that it will not grant the same or similar rights to, or use or engage the services of, any company that competes directly or indirectly with SW. It is expressly intended by both parties that SW shall be entitled, at SW's option, to enforce such license directly against third parties.

2. Payment & Fees.

- a. SW agrees to pass along payment for Food purchased from Restaurant via the System as follows: Within 35 days of the end of each calendar month (each month, a "Billing Period"), SW shall mail payments received by SW (on behalf of Restaurant) from Customers to Restaurant for such Billing Period. SW shall remit such amount (the "Total Invoice Amount") less the Marketing Services Fee set forth below less any other fees hereunder ("Payment"). For example, and solely by way of illustration, if the hypothetical Total Invoice Amount for the Billing Period ending June 30, 2006 is \$4,000, on or prior to August 5, 2006, SW shall mail to Restaurant \$3,600 (i.e. the Total Invoice Amount of \$4,000 less the Marketing Services Fee less the Menu System Fee).

<u>Total Invoice Amount</u>	<u>Marketing Services Fee</u>
(a) Less than or equal to \$1,000	3.0% of the Total Invoice Amount
(b) Between \$1,000 and \$5,000	10% of the Total Invoice Amount
(c) Greater than \$5,000	12.0% of the Total Invoice Amount

- b. Restaurant covenants to remit to the applicable taxing authority all sales tax for the Total Invoice Amount and agrees to indemnify and hold SW harmless for any sales tax liability created in connection with this Agreement.

- c. SW will enter Restaurant's initial menu on the System for a \$50 charge. Thereafter, Restaurant will pay a charge of \$100 for menu updates. SW will have 10 business days from the date SW is notified of a menu update and/or price change by Restaurant to make the relevant changes on the System and Restaurant will honor the previous price on all items on the System until such time.
- d. In the event Restaurant desires to receive payments on an accelerated basis, SW shall be paid (by deducting a prorated, "Accelerated Payment Fee" from the Payment) .8% per month for the applicable Total Invoice Amount (measured from the day payment is required to be made in accordance with Section 2a (i.e., 35 days from the end of the calendar month). For example, and solely by way of illustration, if Payment for June 2006 is to be mailed on or prior to August 5 and Restaurant desires payment on July 5, 2006, a .8% Accelerated Payment Fee shall be assessed to Restaurant (such amount to be deducted from the Total Invoice Amount).

To exercise accelerated payment schedule Initial _____

3. **Electronic Contracts.** Both parties hereby agree that any electronic contracts signed by Restaurant via the System shall be binding upon both parties.
4. **Supply, Cost Reduction and Advertising Program.** SW may, from time to time, provide Restaurant with bags, napkins, cup holders, signage (both online and offline) and posters, cutlery and other restaurant supplies ("Supplies") at a discounted price to what Restaurant would typically pay (or, in some instances, for free) for the purpose of advertising the goods and services of SW and/or third-parties. Restaurant hereby grants SW an irrevocable, transferable, sublicenseable, exclusive license to advertise the goods and services of SW and/or third-parties on any and all materials and media, whether now known or hereafter created or discovered, relating to or associated with Restaurant. Restaurant agrees to use all Supplies in the ordinary course of its business. It is expressly intended by both parties that SW shall be entitled to enforce such licenses directly against third parties, in SW's sole discretion.
5. **Length of Agreement.** This Agreement shall commence on the Effective Date and shall remain in effect for 1 year. This Agreement shall automatically renew for consecutive 3 year periods (provided neither party sends to the other party, via registered mail, a notice of such party's intent to cancel this Agreement at least 60 days prior to the end of the then-current Term). Notwithstanding the foregoing, in the event the aggregate of Total Invoice Amount payments remitted to Restaurant in connection with this Agreement exceed \$25,000 during any Term, this Agreement shall automatically renew for another 3 year Term unless SW provides written notice to Restaurant of SW's intent not to renew at least 60 days prior to the end of the then-current Term.

This Agreement, (along with Annex I attached hereto) entered into on this 04th day of June, 2006, (the "Effective Date") constitutes the entire agreement between the parties and supersedes any prior understanding (whether written or oral). This Agreement can only be modified in writing signed by both parties. Each party has read, understands and agrees to the terms hereof.

SEAMLESSWEB PROFESSIONAL
SOLUTIONS, INC.

By: _____
Name: _____
Title: _____

"RESTAURANT" Indus Valley
(address: 2636 Broadway)
NY, NY 10025
By: Lakshmi Singh
Name: LAKSHMI SINGH
Title: PRCC

ANNEX I

- I. **Governance of Law and Validity.** Restaurant agrees to comply with all of Restaurant's current local state laws, rules and regulations for Food sold for human consumption as may be enacted or amended from time to time. This Agreement shall be governed by and construed in accordance with the laws of New York State without regard to conflicts of laws provisions thereof. In the event that any portion of this Agreement is held to be unenforceable, the remainder of the provisions shall remain in full force and effect.
- II. **Remedies & Indemnification.** In the event of a breach of this Agreement, in addition to any remedies in law or equity, the non-breaching party shall be entitled to obtain specific performance and immediate injunctive relief of the breaching party's obligations hereunder. Further, if Restaurant violates any of the exclusivity provisions hereof, SW shall also have the right to double the Marketing Services Fee retroactively from the date of such non-compliance. Restaurant agrees to indemnify and hold harmless SW on demand against all losses, liabilities, claims, costs and expenses incurred and arising out of the quality of the Restaurant's Food and/or delivery (including, without limitation, all losses, liabilities and costs incurred as a result of defending or settling any claim alleging any such liability) and any actions taken on behalf of the Restaurant as Restaurant's attorney-in-fact.
- III. **Affiliates.** For purposes of this Agreement, the term Restaurant shall include such restaurant's Affiliates. "Affiliates" means (i) any person, organization or entity ("Business") that controls, is controlled by or is under common control and/or ownership with Restaurant, (ii) any Business in the business of providing Food that is operating out of the same location as Restaurant and/or (iii) any person or entity that owns more than one percent (1%) of Restaurant (whether directly or indirectly).
- IV. **Representations & Warranties.** Restaurant represents and warrants that it is not a party to any agreement that prohibits Restaurant from complying with any of the terms of this Agreement (a "Conflicting Agreement"). Should it be discovered that a Conflicting Agreement exists, Restaurant shall immediately take all steps necessary to terminate the Conflicting Agreement as soon legally permissible and the Marketing Services Fee shall be increased in accordance with Section II of this Annex. The Services are provided on an "as is" and "as available" basis without warranties of any kind and under no circumstances shall SW be liable for any damages of any type that result from Restaurant's use of the Services.
- V. **Confidentiality.** Restaurant shall keep all information about Customers strictly confidential and shall not use any such information for any purpose other than to fulfill Restaurant's obligations pursuant to this Agreement.